

**AN ORDINANCE BY COUNCILWOMAN DEBI STARNES
AS SUBSTITUTED
BY FINANCE/EXECUTIVE COMMITTEE**

05-O-0758

AN ORDINANCE AMENDING THE WATER/WASTEWATER BUDGET BY APPROPRIATING FROM THE 1999 WATER AND WASTEWATER BOND FUND AN AMOUNT NOT TO EXCEED \$2,230,000.00; AUTHORIZING THE MAYOR OR HER DESIGNEE TO REBATE TO THE UNITED STATES GOVERNMENT EXCESS EARNINGS HELD IN THE 1999 WATER AND WASTEWATER BOND FUND IN ACCORDANCE WITH SECTION 148(f) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; AUTHORIZING THE CHIEF FINANCIAL OFFICER AND CITY ATTORNEY TO TAKE SUCH ACTIONS AS ARE NECESSARY TO EFFECT SAID REBATE; AND FOR OTHER PURPOSES.

Whereas, the City of Atlanta (the "City") adopted a Master Bond Ordinance 99-O-0399, on March 31, 1999 (the "Bond Ordinance") authorizing the issuance of its Series 1999A Water and Wastewater Revenue Bonds, ("the Bonds"); and

Whereas the Bonds were issued on April 22, 1999, in an aggregate principal amount of \$1,096,140.000; and

Whereas, a portion of the Bonds, including earnings thereon (the "Project Fund Monies"), are to be used to permanently finance the cost of acquisition, construction, and installation of additions, extensions, replacements, and improvements to the City's water and wastewater system (the "System"); and

Whereas, pursuant to Article IV of the Bond Ordinance a project fund (the "Project Fund" and also known as the "1999 Water and Wastewater Bond Fund") and a renewal and extension fund (the "Renewal and Extension Fund") were established, with the Project Fund Monies held in the Project Fund and certain revenues from operation of the System held in the Renewal and Extension Fund; and

Whereas, pursuant to Section 148(f) of the Internal Revenue Code of 1986, as amended (the "Code"), the excess of the amount earned on certain investments related to tax-exempt bonds, such as the Project Fund Monies with respect to the Bonds, over the amount that would have been earned on those investments if they were invested at a rate equal to the yield on the related tax-exempt bonds plus any income attributable to such excess (hereinafter the "Excess Earnings") must be rebated to the United States Government, together, in certain circumstances when the amount of Excess Earnings is not timely rebated to the United States Government, with interest and penalties thereon; and

Whereas, pursuant to the Bond Ordinance the City agreed to cause the amount of Excess Earnings (including interest and penalties, if any, thereon) that must be rebated to the United States (“Arbitrage Rebate”) to be periodically calculated and set aside in a special fund (the “Rebate Fund”) established under Article IV of the Bond Ordinance and further agreed to cause the Arbitrage Rebate to be paid to the United States, as required under Section 148(f) of the Code; and

Whereas, the City caused the amount of Arbitrage Rebate payable with respect to the Bonds to be periodically calculated in order to comply with its Arbitrage Rebate obligation; and

Whereas, as of April 21, 2004, the amount of Arbitrage Rebate then owed with respect to the Bonds was erroneously calculated to be zero but the Excess Earnings payable as of that date have now been re-determined to equal approximately \$5.5 million (exclusive of interest and penalties, if any);

Whereas, the 2005 Budget for the 1999 Water and Wastewater Bond Fund (2J26) has been approved for \$3,271,363, the transfer of appropriations for \$2,230,000 will increase the Arbitrage Rebate Payment account to the required level of \$5,501,363 to make necessary payments to the Internal Revenue Service.

Whereas, it is in the best interests of the City and the City’s Water and Wastewater Bond Fund to now appropriate funds to cover the payment of the Arbitrage Rebate to the United States Government.

THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA hereby ordains as follows:

SECTION 1: That the 2005 Water and Wastewater Budget be, and is hereby amended as follows:

Transfer from Appropriations

2J26 791001 T11001	Reserve for Appropriations	<u>\$2,230,000.00</u>
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Transfer to Appropriations

2J26 729023 T31001	Arbitrage Rebate Payment	<u>\$2,230,000.00</u>
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SECTION 2: That the Chief Financial Officer is hereby authorized to cause the necessary Arbitrage Rebate to be paid to the United States Government, in an amount not to exceed

\$5,500,000.00, to be charged to and paid from FAC 2J26 (1999 Water and Wastewater Bond Fund) 529023 (Arbitrage Rebate) T31001 (Unallocated Fund-Wide Expenses) or from amounts currently held in the Renewal and Extension Fund, as the Chief Financial Officer may determine.

SECTION 3: That in the event penalties are assessed due to the timing of the Rebate payment, the Chief Financial Officer will submit legislation for approval to the City Council. Said legislation will identify the source of and specify the amount of payment.

SECTION 4: That the Mayor, City Attorney and Chief Financial Officer are hereby authorized to execute all releases, powers, forms or other documents as may be necessary or convenient to accomplish payment of the Arbitrage Rebate on behalf of the City of Atlanta.